



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0074, formerly USCG-2011-0314]

RIN 1625-AA09

Drawbridge Operation Regulation; Hood Canal, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to modify the drawbridge operating regulation for the Hood Canal floating drawbridge near Port Gamble. This modification would relieve heavy rush hour road traffic on State Routes 3 and 104, by allowing the draws of the bridge to not open for maritime traffic during afternoon rush hour in the summer months.

DATES: Comments and related material must reach the Coast Guard on or before **[Insert date 45 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0074 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,

Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail the Bridge Administrator, Coast Guard Thirteenth District; telephone 206-220-7282 e-mail randall.d.overton@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0074), indicate the

specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0074" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they

reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert USCG-2012-0074 and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding

our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**, using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### Basis and Purpose

Senator Phil Rockefeller and Representative Christine Rolfes of the Washington State Legislature requested that the operating regulations of the Hood Canal Bridge be changed to provide some relief to road traffic on State Routes 3 and 104. Traffic queues south of the eastern end of the bridge can be in excess of 45 minutes during and after openings of the draw span. The stopped road traffic on this two-lane highway blocks access to intersecting streets along the queue. The current operating regulations for the bridge are found at 33 CFR 117.1045. Per existing operating regulations, the bridge shall open on signal if at least one hour notice is provided and that the draw shall be opened horizontally for three hundred feet unless the maximum

opening of 600 feet is requested. The current regulations remain in effect except for the establishment of the restricted period. Navigation on the waterway consists of commercial tugs with tows, recreational vessels of various sizes, commercial fishing vessels, and U.S. naval vessels with escort vessels including those of the U.S. Coast Guard. This proposed change to the Hood Canal draw span operating schedule will not affect commercial tug and tow vessels nor will it affect U.S. Naval Vessels or vessels in service to the U.S. Navy or other public vessels of the United States because pursuant to the modification, the bridge is required to open for these types of vessels during the restricted period. The Coast Guard conducted a test deviation of the bridge operating schedule from May 27, 2011 through September 30, 2011 during which the bridge was not required to open from 3 pm to 6 pm except for U.S. Navy Vessels and vessels attending the missions of the U.S. Navy. This test deviation was published in the Federal Register under docket number USCG-2010-0314 and comments were received and evaluated during the comment period which ended November 30, 2011.

Comments received, during the test deviation, from waterway and roadway users as well as public and private interest were evaluated and considered while developing this proposed deviation.

### Discussion of Proposed Rule

The proposed deviation will allow the bridge to not open for vessel traffic from 3 p.m. to 6:15 p.m. daily from 3 p.m. May 22 to 6:15 p.m. September 30 except for commercial tug and tow vessels and vessels of the U.S. Navy or vessels attending the missions of the U.S. Navy and other public vessels of the United States. At all other times the bridge will operate in accordance with 33 CFR 117.1045.

The Hood Canal Bridge provides three navigational openings for vessel passage, the movable floating span, subject to this proposed change, and two fixed navigational openings; one on the east end of the bridge at Salsbury Point, and one on the west end of the bridge at Termination Point. The fixed navigational opening on the east end of the bridge provides a horizontal clearance of 230 feet and a vertical clearance of 50 feet above mean high water. The opening on the west end of the bridge provides a horizontal clearance of 230 feet and a vertical clearance of 35 feet above mean high water. Vessels that are able to safely pass through the fixed navigational openings are allowed to do so during the restricted period.

### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of

these statutes or executive orders.

#### Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. We have reached this conclusion by the fact that commercial tow vessels and U.S. Naval Vessels are exempt from the restricted openings. Vessels that would be primarily affected are recreational vessels that are not able to pass through the fixed navigational channels of the bridge. Vessels affected by the restricted opening schedule will be able to plan their trips to avoid the restricted period.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.



The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would primarily affect recreational sailboats which have mast heights that preclude them from passing under the fixed navigational openings in the bridge. Vessels which require an opening will be informed of the restricted closure period via the Coast Guard's Local Notice to Mariners which will allow them to plan trips to avoid this time frame.

If you think your business, organization or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Randall

Overton, Coast Guard Bridge Administrator, 13<sup>th</sup> Coast Guard District, at (206) 220-7282. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed

rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian

tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to

read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of  
Homeland Security Delegation No. 0170.1.

2. Amend 117.1045 by adding the below text as  
paragraph (b) and changing the current paragraph (b) to read  
(c) and current paragraph (c) to read (d):

§ 117.1045 Hood Canal.

(b) The draw of the Hood Canal Bridge, mile 5.0, need not  
open for vessel traffic from 3 p.m. to 6:15 p.m. daily from  
3 p.m. May 22 to 6:16 p.m. September 30, except for  
commercial tug and tow vessels and vessels of the U.S. Navy  
or vessels attending the missions of the U.S. Navy and other  
public vessels of the United States. At all other times the  
bridge will operate in accordance with subparagraph (a) of  
this section.

Dated: February 6, 2012                      K. A. TAYLOR  
   Rear Admiral, U. S. Coast Guard  
   Commander, Thirteenth Coast Guard District

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